IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.36941 of 2007
RAVI RANJAN, Son of Mahesh Narayan Das, R/o A/18, A.G.Colony, Ashiana Nagar, P.S. Shastrinagar, Patna – 25.
.. Petitioner

Versus

1. STATE OF BIHAR
2. Ms. Neelam Singh, Widow of Late Shashi Shekher Pd. Singh, 301, Aranaya Vihar, Boring Road, P.S. S.K.Puri, Patna.

… Opp. Parties.

For the petitioner : Mr. Anirudh Kumar Sinha, Advocate
For the State : Dr. Mayanand Jha, A.P.P.
For O.P. : Mr. Shree Ganesh, Advocate

O R D E R

4 27.11.2008 The petitioner, one of the six persons arrayed as accused in Complaint Case No. 1397(C) of 2004, has preferred this application for quashing of the order dated 17.12.2004, passed therein by Sri Manoj Kumar Singh, Judicial Magistrate, First Class, Patna, whereby he has taken cognizance under sections 406, 420, 120B I.P.C. against all the accused, including the petitioner, and has issued summons.

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Neelam Singh, the complainant, impleaded as O.P. No. 2 herein, filed the said complaint on 25.6.2004 for alleged commission of offences under sections 506, 409, 406, 420, 120B I.P.C. in between July, 2002 and April 2003. It was alleged that after she became a widow, accused nos. 1 and 2 approached her and her father in the months of July and August, 2002 and convinced them to invest Rs. 5 lacs in their company's business and get assured return of Rs. 25,000/- per month as minimum guarantee and interest at the rate of 15% per annum. It was divulged that accused no. 1 was the Managing Director of Tofus Pharmaceuticals Ltd. and the other

accused were its Directors. The complainant induced by accused nos. 1 and 2 handed over cheque no. 953901 dated 2.9.2002 for Rs. 5 lacs in lieu whereof she was made distributor for part of Bihar on various terms and conditions which was signed by the complainant and accused no. 1 and witnessed by accused no. 2. However, she later on came to know that the company was not a genuine one and the directors were running the company only to cheat people. It was also alleged that she was not getting any return from the distributorship as the accused used to collect the money from the shopkeepers directly. Eventually on 31.3.2003 she requested accused no. 2 to cancel the agreement and return the security money with the agreed interest and also settle the accounts which by that time had reached Rs. 6,80,001/-. On a request made by the Company she returned all their goods lying in her godown worth Rs. 61817/- which was duly received by their staff but she was not paid her dues. All efforts to make accused no. 2 to pay her dues were avoided under various pretext and eventually she was threatened and when she went to the Company's office in May, 2003 she found the office closed without informing the Registrar of Companies. It is her allegation that the accused persons have cheated her of valuable security and property.

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Assailing the impugned order, it was submitted that though the petitioner has been referred in the complaint as one of the Directors, he had already resigned from the company on 6.7.1999, i.e. much prior to the agreement being entered into and as such he had no concern whatsoever with the transaction entered into by the

complainant and accused nos. 1 and 2 and whatever followed thereafter. It was also submitted that it would be apparent from the recital of the complaint petition that all transactions of the complainant was with accused nos. 1 and 2 and the assurances were also given by them as was the refusal to pay back the security money along with the accrued interest. Even the allegation of inducement was against accused nos. 1 and 2. On the aforesaid premise it was submitted that the prosecution of the petitioner would be an abuse of the process of the court.

The learned counsel for O.P. No. 2 was unable to justify the impugned order and cut a sorry figure.

Admittedly, the entire episode revolves round "commercial transaction" for which a civil remedy is available. That apart no allegations of commission of any overt act has been made against the petitioner and the entire act of inducement, fraud, violation of the terms of the agreement and refusal to return the complainant's dues have been attributed to accused nos. 1 and 2.

In the aforesaid circumstances prosecution of the petitioners would amount to an abuse of the process of the court. Accordingly the impugned order, so far as the petitioner is concerned, is hereby quashed and the application is allowed.

(Abhijit Sinha, J.)

Spd/-

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